

Date of decision: August 3rd, 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment? -Yes
2. To be referred to the Reporter or not? =yes
3. Whether their Lordships wish to see the fair copy of judgment? -No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitutio..  
  
India,1950 or any order made thereunder? -No
5. Whether it is to be circulated to the Civil Judge? No

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Mr.S.R.Shah, L.A. for the appellant  
Mr.K.S.Nanavati, L.A. for the respondents  
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Coram: N.J.Pandya & A.R.Dave,JJ.

August 3rd, 1996

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ORAL JUDGMENT (Per N.J.Pandya,J.)

On earlier occasion when the matter was heard, it was pointed out that the respondent-Company is under liquidation. This prompted the appellant to request for

joining the Official Liquidator as a party. This request was granted on 18-3-1996. In response to the notice issued to the Official Liquidator, we have got an endorsement to the effect that the Company is not under liquidation. Obviously, therefore, there is no question of making him a party. Hence, the name of the Official Liquidator as party respondent is deleted.

2. So far as the question involved in the appeal is concerned, by now, it is covered by judgment of Hon'ble the Supreme Court reported in AIR 1978 SC 1478.

3. The appellant is the Regional Director of the Employees State Insurance Corporation and in course of his inquiry in connection with the working of the respondent-Mill, it was noticed that there was one Deepak Yarn Trading Company which was doing the work of removing Cotton Waste in form of entangled yarn from the Machines of the said Mill, which would be covered by the Employees of the State Insurance Act, 1948. As a result, Application (ESI) No.57 of 1976 came to be filed at Ahmedabad. The learned Judge of the Employees Insurance Court, by his judgment dated 23rd November 1981 exonerated the Mill Company and held that the employees employed by Messrs Deepak Yarn Trading Company with regard to the contract for purchase of Cotton Waste Yarn are not employees under Sec.29 of the Act and the said Mill Company is not liable to pay contributions under the said Act. It is this question which is before us in the present appeal.

4. In the said Supreme Court judgment, the case of the Regional Director, ESI was that for the functioning of a Cinema Theatre known as Royal Talkies, cycle stand was provided and the employees working in that stand and canteen of the Theatre are covered by the definition of the employee as given in the said Act and Cinema owner should have held for the purpose as principal employer. No doubt, this work was done i.e. the work of the canteen and the work of running of cycle stand, through a contractor. That is why, the question whether the cinema owner, as principal employer, can be held liable or not.

5. After elaborately going through the provisions of the said Act and particularly its definition it has been categorically held by the learned Judges in that Judgment that the Cinema owner may not be bound to run either a canteen or a cycle stand, but, if he does so, it is in connection with the work of an establishment because on one hand, the Cinema goes i.e. spectators would be given an additional amenity of purchasing snacks from the

canteen and on the other, their vehicles will be taken care of while they are in the auditorium by providing said service of cycle stand. Similarly, in the instant case also the Company has a spinning unit, which of necessity, will have some entangled yarn in the bobbins in the course of spinning which has to be removed for smooth functioning of the Mill. On the one hand the Company will be earning out of that waste yarn by selling it, which eventually may be used by the purchaser for its own purpose and on the other the Company will be getting back the bobbins after removal of the yarn. There can be no manner of doubt whether the work thus done by the employee whether contract or not, the work is in connection with the work of the establishment. That exactly is the feeling of Justice D.H.Shukla, as he then was, when he passed the order dated 14th September 1987 to the effect that the matter is required to be placed before a Division Bench because it came to be noticed that in a criminal matter in almost same fact situation, contrary view was taken involving the provisions of the Contract Labour Regulation and Abolition Act, 1970. This decision is 25(2) GLR 793. The learned Judge, therefore, felt that, if, on analogy, the case is required to be dealt with by him, it may better be dealt with by a Bench of appropriate members of Judges so that on one hand the aforesaid decision 25(2) GLR 793 can be taken care of and on the other, the decision of the Supreme Court can be given effect to.

6. Subsequent to the aforesaid Supreme Court Judgment, one more judgment dealing with the matter came to be reported in AIR 1987 SC 1686. The work involved in it was construction of additional building required for expansion of a factory. It was held to be ancillary, incidental or having some relevance or link with the object of the factory. Hence, the workers employed for the construction work of the additional building for expansion of the factory were held to be employees within the meaning of Sec.2(9) of the said Act.

7. Under the circumstances, we have no hesitation in holding that the employees of Messrs Deepak Yarn Trading Company are the employees of the Respondent-Company. The appeal is, therefore, allowed. The Order of the ESI Court passed on 23rd November 1981 is set aside. The declaration that the employees employed by Deepak Yarn Trading Company, Ahmedabad are that of the Respondent-The Saraspur Mills Limited, is granted in favour of the appellant. The appeal stands disposed of accordingly with no order as to costs.

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